

REMARKS/ARGUMENTS

Claims 34-58 are active. Claims 9-33 have been withdrawn from consideration. New independent Claim 34 tracks Claim 1 and finds support in the claims of the attached English translation of the priority document. The terms “at least 90% identical to the polypeptide of SEQ ID No. 2” and “methylene hydrofolate reductase activity” find support on page 5, lines 1-15 of the English translation of the priority document and on page 4 of the present specification. Fragments of polynucleotide sequences are described in the specification at pages 7 and 8 of the specification. New Claims 35-42 also find support in the above-mentioned portions of the priority document and specification. Claim 40 also tracks and finds support in original Claim 3 and Claim 43 tracks and finds support in original Claim 2. Claims 44-50, directed to vectors and host cells find support on pages 8-10 of the specification and of the priority document. Claims 51, 52 and 55 find support in the specification at page 6, lines 7-9, and page 8, lines 29-page 9. Claims 53 and 54 find support in original Claim 1. Claims 56-58, as directed to SEQ ID No: 1, find support on page 4, 7 and 8 of the English translation of the priority document and on pages 3, 4, 7 and 8 of the specification. Accordingly, the Applicants do not believe that any new matter has been added.

The Applicants thank Examiner Hutson for the courteous and helpful interview of September 17, 2003. It was suggested that revision of the claim language to refer to nucleic acid sequences at least 90-95% similar to SEQ ID No: 2 would likely address the enablement, description and prior art rejections. Other clarifying amendments were also discussed. The new claims are based on the suggested amendments. Favorable consideration is therefore respectfully requested.

RESTRICTION/ELECTION

The Applicants note that the Restriction Requirement has been made FINAL. Upon an indication of allowability for the claims of elected Group I, they respectfully request rejoinder of claims in the nonelected groups, which depend from or include the limitations of the allowable elected claims.

Information Disclosure Statement

The Applicants thank Examiner Hutson for acknowledging the documents cited on the April 9, 2002 and November 16, 2001 information disclosure statements.

Objection—Claims

Claims 1, 4, 6 and 8 were objected to for various informalities. This objection is moot in view of the amendments above.

Rejection—35 U.S.C. 112, second paragraph

Claim 5 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection is moot in view of the cancellation of Claim 5.

Rejection—35 U.S.C. 112, first paragraph

Claims 1-3, 5 and 8 were rejected under 35 U.S.C. 112, second paragraph, as lacking adequate description or enablement. This rejection is moot in view of the cancellation of these claims. It would not apply to the newly presented claims which are directed to sequences having at least 90% identity with either SEQ ID No: 1 or 2.

Rejection—35 U.S.C. 102(a)

Claims 1, 2, 3, 5 and 8 were rejected under 35 U.S.C. 102(a) as being anticipated by Pompejus et al., WO 0100843. This rejection is moot in view of the attached English translation of the foreign priority document. Support for the present claims in the priority document is indicated above.

Rejection—35 U.S.C. 103(a)

Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Blanco et al., J. Bacteriol. 180:1586. This rejection is moot in view of the cancellation of Claim 3. It would not apply to the present claims as Blanco is directed to a sequence which is only about 70% identical to SEQ ID No: 2.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.

Respectfully submitted,

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